

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

ELTON HARPER

PETITIONER

v.

No. 4:21CV94-SA-RP

CIRCUIT COURT OF WASHINGTON COUNTY, ET AL.

RESPONDENTS

**ORDER REQUIRING PETITIONER TO CHOOSE
WHETHER HE WISHES THE COURT TO
CONSTRUE HIS PLEADING AS AN INITIAL
PETITION FOR A WRIT OF *HABEAS CORPUS***

This matter comes before the court, *sua sponte*, to provide the petitioner with the opportunity to choose whether he wishes this court to construe his pleading as an initial petition for a writ of *habeas corpus* under 28 U.S.C. § 2254. Before the plaintiff chooses, the court must caution him regarding the consequences he could face should the court deny his petition. *United States v. Castro*, 540 U.S. 375, 383 (2003). The court, therefore, notifies the petitioner:

- (1) The court intends to construe the pleading as an initial petition for a writ of *habeas corpus*,
- (2) This recharacterization means that any subsequent petition will be subject to the restrictions on “second or successive” petitions,
- (3) He has 21 days to either withdraw the petition – or to amend it so that it contains all the *habeas corpus* claims he believes he has.

SO ORDERED, this, the 13th day of August, 2021.

/s/ Sharion Aycock
U. S. DISTRICT JUDGE